MONTANA LEGISLATIVE HISTORY

Chapter 470 1999

Bill H _____ S 490

Original bill & ~~history~~ ✓ C

H. Committee on Business Labor		S. Committee on Bus' Industry	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
3/22	✓ C	2/18	✓ C
_____	___C	_____	___C
3-24	✓ C	_____	___C
Date Out 3/24	___C	2/19	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

3/27	Sent to Enrolling		
3/29	Returned from Enrolling		
3/30	Signed by President		
3/31	Signed by Speaker		
3/31	Transmitted to Governor		
4/05	Signed by Governor		
4/06	Chapter Number Assigned		
	Chapter Number 254		
	Effective Date: 10/01/1999 - All Sections		

SB 489 Introduced by Bohlinger, et al. *LC1199 Drafter: Fox*

Allocate Tobacco Settlement Proceeds for a Tobacco Disease and Use Prevention Program, Comprehensive Health Care for Children, and Medical Services Paid by the General Fund;...

2/13	Introduced and 1st Reading		
2/13	Referred to Public Health, Welfare and Safety		
2/13	Fiscal Note Requested		
2/19	Hearing		
2/20	Fiscal Note Received		
2/20	Fiscal Note Signed		
2/20	Committee Executive Action--Bill Passed	8	3
2/20	Committee Report--Bill Passed		
2/22	Fiscal Note Printed		
2/23	2nd Reading Pass Motion Failed	21	28
2/23	2nd Reading Indefinitely Postponed	28	21

SB 490 Introduced by Glaser *LC1637 Drafter: Niss*

Require Prompt Payment for Construction Contractors and Subcontractors;...

2/13	Introduced and 1st Reading		
2/13	Referred to Highways and Transportation		
2/15	Fiscal Note Requested		
2/16	Rereferred to Business and Industry		
2/18	Hearing		
2/19	Fiscal Note Received		
2/19	Fiscal Note Signed		
2/19	Fiscal Note Printed		
2/19	Committee Executive Action--Bill Passed as Amended	6	1
2/20	Committee Report--Bill Passed as Amended		
2/22	2nd Reading Passed	49	0
2/23	3rd Reading Passed	49	0
	Transmitted to House		
3/02	Referred to Business and Labor		
3/22	Hearing		
3/25	Committee Executive Action--Bill Concurred as Amended	17	1
3/25	Committee Report--Bill Concurred as Amended		
3/29	2nd Reading Concurred	64	31
3/30	3rd Reading Concurred	58	41
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	50	0
4/09	3rd Reading Passed as Amended by House	50	0
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		

4/15	Signed by President		
4/16	Signed by Speaker		
4/16	Transmitted to Governor		
4/26	Signed by Governor		
4/27	Chapter Number Assigned		
	Chapter Number 470		
	Effective Date: 10/01/1999 - All Sections		

SB 491 Introduced by Grimes *LC0945 Drafter: Niss*

Revise the Law Governing Health Maintenance Organizations;...

2/13	Introduced and 1st Reading		
2/13	Referred to Public Health, Welfare and Safety		
2/16	Fiscal Note Requested		
2/18	Fiscal Note Received		
2/18	Fiscal Note Signed		
2/19	Fiscal Note Printed		
2/19	Hearing		
2/20	Committee Executive Action--Bill Passed as Amended	11	0
2/20	Committee Report--Bill Passed as Amended		
2/23	2nd Reading Passed	26	23
2/23	Rereferred to Finance and Claims		
3/05	Hearing		
3/11	Tabled in Committee		
3/26	Missed Deadline for Appropriation Bill Transmittal		

SB 492 Introduced by Grosfield, et al. *LC1154 Drafter: Mitchell*

Allocate the Resource Indemnity and Ground Water Assessment Tax Proceeds to Mineral Development Reclamation Projects When the Balance in the Resource Indemnity Trust Totals $100 Million;...

2/15	Introduced and 1st Reading		
2/15	Referred to Natural Resources		
2/15	Fiscal Note Requested		
2/19	Fiscal Note Received		
2/19	Hearing		
2/20	Fiscal Note Signed		
2/20	Fiscal Note Printed		
2/22	Committee Executive Action--Bill Passed	11	0
2/22	Committee Report--Bill Passed		
2/23	2nd Reading Passed	38	11
2/24	3rd Reading Passed	40	9
	Transmitted to House		
3/02	Referred to Natural Resources		
3/03	Rereferred to Taxation		
3/10	Hearing		
4/08	Committee Executive Action--Bill Concurred	15	5
4/08	Committee Report--Bill Concurred		
4/10	2nd Reading Concurred as Amended	98	2
4/13	3rd Reading Concurred	98	2
	Returned to Senate with Amendments		
4/15	2nd Reading House Amendments Concurred	47	0
4/16	3rd Reading Passed as Amended by House	49	1

Senate BILL NO. 490

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PROMPT PAYMENT FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS; PROVIDING FOR THE PAYMENT OF INTEREST FOR DELAYED PAYMENTS; ALLOWING COSTS AND ATTORNEY FEES IN CIVIL ACTIONS TO ENFORCE PAYMENT; ALLOWING OTHER REMEDIES; PROVIDING EXCEPTIONS; SUPERCEDING THE UNFUNDED MANDATE LAW; AMENDING SECTION 18-2-101, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Payment of contractors and subcontractors.** Notwithstanding any other provision of this title, payment of a construction contractor or subcontractor, as those terms are defined in [section 3], for services performed by a construction contractor or subcontractor is governed by the provisions of [sections 3 through 9].

Section 2. Section 18-2-101, MCA, is amended to read:

"**18-2-101. Definitions of building, costs, and construction.** In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, [section 1], 18-2-113, 18-2-114, and 18-2-122:

(1) "building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state money;

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of transportation;

(d) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);

(2) "building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine

land reclamation project is completed;

(c) leased or to be leased by a state agency;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in 17-5-401 and 17-5-801."

NEW SECTION. **Section 3. Definitions.** As used in [sections 3 through 9], unless the context requires otherwise, the following terms apply:

(1) "Construction contract" means a written agreement between an owner and a contractor for the contractor to construct or improve or to provide construction management for the construction or improvement of an improvement to real property.

(2) "Contractor" means a person who has signed a construction contract with an owner.

(3) "Government entity" means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university system, a city, town, county, consolidated municipal-county government, school district, or other special district.

(4) "Improve" means to build, alter, demolish, repair, construct, expand, cover, excavate, grade, fill, clear, plant, landscape, or furnish material or labor, or both for an improvement.

(5) "Improvement" means all or a part of a residential or commercial building, structure, area of real property, quantity of earth or fill material, tree or shrubbery, driveway, roadway, or parking area.

(6) "Owner" means a governmental entity or private entity that has a legal interest in the real property improved or to be improved by the performance of the construction contract.

(7) "Owner's representative" means an architect, engineer, or other person who represents the owner and is designated in the contract as the person representing the owner for the purposes of the administration or oversight of the performance of the construction contract.

(8) "Receipt" or "receive" means actual receipt.

(9) "Subcontract" means a contract between a contractor and a subcontractor or between a subcontractor and another subcontractor, the purpose of which is the performance of all or a part of the construction contract.

(10) "Subcontractor" means a person who has contracted with a contractor or another

subcontractor for the purposes of performance of all or a part of a subcontract.

NEW SECTION. **Section 4. Performance entitles contractor or subcontractor to payment.** (1) Performance by a contractor of a construction contract in accordance with the provisions of the contract entitles a contractor to payment from the owner.

(2) Performance by a subcontractor of a subcontract entitles the subcontractor to payment from the contractor.

NEW SECTION. **Section 5. Payment to contractor and subcontractor.** (1) If a contractor performs a construction contract according to the terms of the contract and requests, either directly to the owner or to owner's representative, payment for performance of the contract, the owner shall pay the contractor, within 15 days after receipt by the owner or the owner's representative of the request for payment, for work performed or materials provided in accordance with the contract.

(2) Within 3 working days after a contractor receives a periodic or final payment from an owner, the contractor shall pay the subcontractor, if any, the full amount due the subcontractor in accordance with the subcontract for work performed or materials provided in accordance with that subcontract.

(3) Within 3 working days after a subcontractor receives a periodic or final payment from a contractor, the subcontractor shall pay another subcontractor, if any, the full amount due the subcontractor under the subcontract for work performed or materials provided in accordance with that subcontract.

NEW SECTION. **Section 6. Obligations upon delay of payment.** (1) If a periodic or final payment that is required by a construction contract to be paid by an owner to a contractor is delayed by more than 15 days from the date the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor to subcontractors on a pro rata basis.

(2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor is delayed for more than 18 days from the date the payment is required by the subcontract

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to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the subcontractor shall ensure that any interest accrued on the delayed payment is distributed by the subcontractor to other subcontractors, if any, on a pro rata basis.

(3) Interest is not required to be paid pursuant to this section unless the owner, contractor, or subcontractor, as appropriate, has been notified of the requirements of this section at the time the request for payment is made. Acceptance of progress payments or final payment releases any claim for interest on the payment.

NEW SECTION. **Section 7. Prevailing party entitled to costs and attorney fees.** In a civil action on a contract to enforce an obligation imposed by [sections 3 through 9], the prevailing party is entitled to reasonable attorney fees and costs, both for trial and appeal. If the parties to a construction contract or subcontract use arbitration, the arbitrator may award fees and costs as the arbitrator may determine.

NEW SECTION. **Section 8. Remedies not exclusive.** The remedies provided by [sections 3 through 9] are not exclusive of any other remedy provided by law or contract.

NEW SECTION. **Section 9. Exception for certain residential dwellings.** The provisions of [sections 3 through 9] do not apply to improvements to real property intended for residential purposes that consist of four or fewer residential units.

NEW SECTION. **Section 10. Unfunded mandate law superceded.** The provisions of [this act] expressly supercede and modify the requirements of 1-2-112 through 1-2-116.

NEW SECTION. **Section 11. Codification instructions.** (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 1, and the provisions of Title 7, chapter 1, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [section 1].

(3) [Sections 3 through 9] are intended to be codified as an integral part of Title 28, chapter 2,

and the provisions of Title 28, chapter 2, apply to [sections 3 through 9].

NEW SECTION. **Section 12. Applicability.** [This act] applies to contracts agreed to on or after October 1, 1999.

- END -

FISCAL NOTE

Bill #: SB0490

Title: Clarify retainage includes relationship between contractor and subcontractor

Primary Sponsor: Bill Glaser

Status: As introduced

Bill Glaser 2/19/99
Sponsor signature Date

Dave Lewis 2-19-99
Dave Lewis, Budget Director Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	**0**	**0**

Yes	No		Yes	No	
	x	Significant Local Gov. Impact	x		Technical Concerns
	x	Included in the Executive Budget		x	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. There is no fiscal impact to state government.
2. MCA 17-8-242 allows 30 days for payment of receipt of supplies or services by an agency. This bill creates an inequity in that it requires contractor payments to be paid in half the time.
3. After receipt of a pay request, the A & E Division or A & E's representative (consultant) is required by contract to verify the validity of the pay request. To verify the validity of the pay request requires an inspection trip to the project to substantiate the stage of construction, materials in-place, and stored materials. Further analysis of comparing the project schedule to the schedule of values is also required.
4. The consultant approves, modifies or requires the contractor to correct requests if discrepancies are found and sends the approved pay requests to the division for payment upon completion of their verification and analysis.

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5. It currently takes the consultant an average of seven days to approve the contractor's pay request (from the date of the contractor's signature), based on January 1999 data.
6. A & E contracts require the consultant to act upon the request within seven days of receipt.
7. Upon receipt from the consultant, the pay request is logged-in and delivered to the division project manager. The pay requests are checked again for math errors and verified against the project budget. If the project manager should discover a discrepancy, calls are made to the contractor and the consultant. After the project manager authorizes the contractor payment, the request is forwarded to the accounting section for processing.
8. It currently takes the A & E Division an average of approximately 14 days to process contractor payments (from the day the request is stamped-in the office to the day it is input to the system), based on January 1999 data.
9. It currently takes an average of approximately 25 to 27 days (depending on the mail) for a contractor to receive payment (from the day the contractor signs the pay request to the day the check is received), based on January 1999 data.
10. Disputes will arise concerning the validity of pay requests (as they occasionally do at present), but new potential for litigation will exist due to this bill.
11. Attempts to meet the standard proposed by this bill would reduce the ability of the A & E Division to adequately administer contracts and/or require payment of interest, which would reduce ability to construct and maintain state buildings.

TECHNICAL NOTES:

This bill conflicts with 17-8-241 and 17-8-242, MCA, which state:

"**17-8-241. Definitions relating to interest assessment.** As used in 17-8-242 through 17-8-244, the following definitions apply: (1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by the state or any agency thereof. (2) "Supplies" means all personal property purchased, leased, or contracted for by the state or any agency thereof, including leases of equipment. The term also includes leases of buildings or other real property by the state or any agency thereof."

"**17-8-242. Interest assessed on amounts due.** (1) Except as provided in 17-8-244, a state agency shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the agency fails to make time payment. (2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 30 days after receipt of a properly completed invoice, addressed to the payer agency, or receipt of the supplies or services by the agency, whichever is later.".

SB 470 SPONSOR: Eck, Dorothy SHORT TITLE: Revise children's trust and endowment
REFERRED ON: 02/12/1999 HEARD ON: 02/18/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed -- VOTE: 7 - 0
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

SB 482 SPONSOR: Mesaros, Ken SHORT TITLE: Request interim study of licensure for mortgage lending
REFERRED ON: 02/13/1999 HEARD ON: 02/19/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 7 - 0
FINAL DISPOSITION 05/07/1999 Chapter Number Assigned

SB 483 SPONSOR: Mesaros, Ken SHORT TITLE: Submit mortgage lender license fee to electors
REFERRED ON: 02/13/1999 HEARD ON: 02/19/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed -- VOTE: 7 - 0
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 484 SPONSOR: Mesaros, Ken SHORT TITLE: Submit mortgage lender per day examination fee to electors
REFERRED ON: 02/13/1999 HEARD ON: 02/19/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed -- VOTE: 7 - 0
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 485 SPONSOR: Mesaros, Ken SHORT TITLE: Submit mortgage lender renewal fee to electors
REFERRED ON: 02/13/1999 HEARD ON: 02/19/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed -- VOTE: 7 - 0
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 490 SPONSOR: Glaser, Bill SHORT TITLE: Require prompt payment for construction contractors and subcontractors
REFERRED ON: 02/16/1999 HEARD ON: 02/18/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 6 - 1
FINAL DISPOSITION 04/27/1999 Chapter Number Assigned

SB 501 SPONSOR: Hertel, John SHORT TITLE: Regulate mausoleums and columbarium
REFERRED ON: 02/15/1999 HEARD ON: 02/19/1999 (S) Discussed in Committee ON: 02/05/1999
EXECUTIVE ACTION: 02/20/1999 Bill Passed as Amended -- VOTE: 7 - 0
FINAL DISPOSITION 04/10/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 18, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 446, 2/12/1999
SB 452, 2/12/1999
SB 453, 2/12/1999
SB 430, 2/12/1999
SB 470, 2/15/1999
SB 490, 2/16/1999

Executive Action: SB 470; SB 430
SB 409; SB 419; SB 459

{Tape : 1; Side : A; Approx. Time Counter : 0}

business where it is difficult to get institutional financing. I urge your support for the bill.

{Tape : 1; Side : B; Approx. Time Counter : 18.1}

HEARING ON SB 490

Sponsor: **SEN. WILLIAM "BILL" GLASER, SD 8, HUNTLEY**

Proponents: **Carl Schweitzer, American Subcontractors Assoc. of Montana**
Don Iverson, National Electric Contractors Assoc.
Zack Pallister, President, American Subcontractors Assoc. of Montana
Janet Cook, ABC Electric
Jim Wolfe, Polar Electric, Helena

Opponents: **Tom O'Connell, Administrator, Architecture & Engineering Division**
Cecilia Vaniman, Montana State University

Opening Statement by Sponsor:

SEN. WILLIAM "BILL" GLASER, SD 8, HUNTLEY. This bill deals with the relationship between contractors and subcontractors relating to payment. I know a lot about contracting because I did it for 35 years. Poor pay from poor contractors puts them at a disadvantage against good pay from good contractors. This bill improves the cash flow of the subcontractors and general contractors and rewards the good contractors.

Proponents' Testimony:

Carl Schweitzer, American Subcontractors Association of Montana. **Section 1** of the bill deals with the title. **Sections 2 and 3** define the terms used in the bill. **Section 4** says in order to get paid, the work in the contract has to be done. **Section 5** deals with prompt payment; i.e. puts a time frame within which an owner has to pay a general contractor, which is 15 days after receipt by the owner or owner's representative. **Subsection 2** says the contractor shall pay the subcontractor within 3 working days after receiving payment from the owner. **Section 6** deals

with consequences of not paying within the time frame. An interest penalty applies to both the owner paying the general contractor and the general paying the sub. **Section 7** says if there's any kind of civil action, the parties who win can be awarded arbitration or attorney fees. **Section 8** says remedies are not exclusive. **Section 9** limits this to commercial construction -- residential construction of 4 units or less does not apply. The reason for the bill is the biggest problem for construction these days is the time frame to get paid. You do the work and the law requires you to pay your employees on a weekly basis and if you don't pay your suppliers in a timely fashion, you lose your discounts, credit, etc. The time frame just keeps growing and growing and we decided it was time to do something about it.

Dennis Iverson, National Electric Contractors Association. We consider this bill fair and simple. We strongly support it and hope you will give it favorable consideration.

{Tape : 1; Side : B; Approx. Time Counter : 29.7}

Zach Pallister, American Subcontractors Association of Montana. The payment scenario has gotten so far out of line that it's difficult to maintain a decent cash flow. I've talked to other contractors and subcontractors in other states and they don't have the problems we do here in Montana; in fact, when I tell the woes of a subcontractor, they see no reason for taking an average of 37 days for a public entity to turn money to a general contractor. What that means to a subcontractor is our agreement with the generals is they have another 7-10 days to pay us, so it takes about 44-47 days. Our discounts from suppliers are typically taken on the 10th of the month and the only way we can get them is to borrow money. I pay my employees weekly. I can't wait 47 days to pay either them or my suppliers. The fact that **SB 490** would give us interest on the money is significant because it wouldn't be so tough on the cash flow. When I'm doing a huge job, if I don't get paid on time it could ruin me. I urge you to promote small business in Montana by supporting this bill.

Janet Cook, ABC Erectors, Billings. We're a small business funded by SBA (Small Business Assistance) funding. In October we billed $40,000 for a job completed but didn't receive payment until the second week in December, which was after I made an

issue of it with the State. Then the November payment came promptly. I had to make an issue of it because we were being re-evaluated by the SBA and much of it was related to cash flow. If we hadn't had our funding from SBA, we probably would have closed. I'm urging you to support this bill.

Jim Wolfe, Polar Electric, Helena. I would like to voice my support for the bill.

{Tape : 1; Side : B; Approx. Time Counter : 38.4}

Opponents' Testimony:

Tom O'Connell, Administrator of Architecture & Engineering Division. He read his written testimony **EXHIBIT(bus40a07).**

{Tape : 2; Side : A; Approx. Time Counter : 0}

Cecilia Vaniman, Montana State University. My office is responsible for managing the construction at MSU, Montana State University. At the present time we have approximately 130 projects under contract with general contractors. I've reviewed files pertaining payments to general contractors over the past nine years. Most of the time, for large projects, we hire outside architects and engineers and it takes them time to review a pay request because they have to review, inspect, etc. Our records show it takes about seven days to turn around a pay request. This is a responsibility to ensure the work is there and also to the taxpayers of Montana to ensure that what was billed is rightfully owed. We have numerous calls from subcontractors and I can tell you that in every complaint we've had in the past nine years, the general contractor has been paid. We aren't involved in the relationship between the general and the subcontractor but I know some of the generals do hold money on their subcontractors. I don't believe we can turn these pay requests around and do the job we're supposed to do within 15 days.

The other complaint we have is the project close-out. Often the general contractors bill us at what they consider completion, yet the job isn't complete. Money is then withheld from the general contractor for specific reasons when the job cannot be completed, and I know then the generals hold money out on their subcontractors. My concern again is the 15-day mandate that

payments go to the contractor. We need the time to fulfill our responsibility on these contracts.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY said they heard another contracting bill earlier and they said payment was withheld because an instructional manual was not completed and wondered if that was sufficient reason to withhold payment. **Cecilia Vaniman** said they considered the Operational and Maintenance Manuals (OMM) and drawings for building to be very important. If the people who run the physical plant don't have the manuals they need and if they haven't received the training (usually a requirement of the contract documents), it's impossible for them to maintain the building. There is often a violator warranty on a mechanical piece of equipment and they need to follow the manufacturer's written instructions. It is often difficult to get this information from the general contractor and that's the reason for the retainage.

SEN. MCCARTHY asked if the entire retainage, or just a percentage was held. **Ms. Vaniman** said at MSU they held what they thought would cost them to duplicate that information, which could range from $5,000 to $20,000.

SEN. MIKE SPRAGUE asked what was a fair amount of time. **Tom O'Connell** said current statute gave them 30 days from receipt of a properly filled-out invoice. If it wasn't paid within that time frame, there was a per-day percentage penalty. He said they couldn't process within the 15-day time period, but he could live within the 30 days. He said if it were possible to process them faster, they would do that.

SEN. SPRAGUE said there was obviously a problem and wondered if a compromise of 18 or 20 days or whatever would work. **Mr. O'Connell** said he believed the problem was the State was the only one who had the time frame defined, but there were other contracting agencies being addressed and those agencies had no time frames. He suggested those entities be brought in under the requirements the State had to follow. It would be a huge step in the right direction. A good thing about the bill was general contractors had to pay the subcontractors within three days. Currently there was no requirement for that. Many of his phone

calls were based on subcontractors who hadn't been paid by the generals. Again, he said he couldn't speed up the process any faster because he didn't have resources to validate the claims.

SEN. SPRAGUE asked the same question of **Zack Pallister** who said the language of the bill was a fair compromise. To cut the payment scenario in half wasn't unreasonable. He said there was no reason an architect or engineer had to have seven days to review a job. He suggested there be a payment application processing day on a monthly basis. Everybody, engineers, architects, state entities, contractors, etc., involved could be at that meeting. It should be possible to take care of that process in one day. Then all that would be left would be to cut the check. Why should that process take 30 days?

{Tape : 2; Side : A; Approx. Time Counter : 8.1}

SEN. SPRAGUE asked about the issue of county & city and **Mr. Pallister** said it would be the same thing.

SEN. DALE BERRY said he had heard from constituents who said the governmental contractors and subcontractors built into their bids a higher amount because of the deferred payment process. He wondered if this delayed payment schedule was indeed costing them more money. **Zach Pallister** said it was but he didn't know any contractors who could afford to put extra money into their bids because it was too competitive. Also, contractors had to watch the cash flow because a person couldn't count on being paid on time. He felt 90% of the general contractors were good contractors who deserved to be paid on time also.

SEN. BERRY asked why residential people were excluded. **Mr. Pallister** thought the smaller residentials required a different kind of payment. They got 50% of the money up front.

SEN. SPRAGUE asked for clarification of the cities and towns aspects of the bill. **Tom O'Connell** said currently Title 17 provisions required state agencies to pay within 30 days. The bill also pulled in cities, towns, school districts and the private sector, not to the existing statute but to a reduced time frame. He thought it would be more reasonable to pull them into the provisions of Title 17, rather than trying to compress them.

He felt much of the testimony referred to contracts not under the control of the State.

SEN. MCCARTHY commented if the proposed definition was put into 17-8-42, it would be accomplished. **Mr. O'Connell** said it would and that's what they were trying to do but they ran out of time.

SEN. JOHN HERTEL asked if the bill was based on ideas from other states which weren't having these problems. **Carl Schweitzer** said they were; in fact, he started copying the bill the Utah Legislature was considering. Also, he had a book which deal with prompt payment legislation and it seemed most states had such legislation.

SEN. HERTEL asked about the possibility of inserting the proposed definition into 17-8-42. **Bart Campbell** said he would not suggest that because Section 17, Section 8, dealt with state agencies and how they did it. It didn't seem to be the best workable way to take one line and throw in local government entities. His suggestion was to take "state" out of the definition (Section 3, Subsection 3) and put it in another section, like Section 5. **Carl Schweitzer** said one of the problems of excluding "state government" from the bill was the part of the contractor paying the subcontractor within three days would be lost. **Bart Campbell** said he thought it would be possible to go to the one section of the new bill and state that "government entities and state agencies".

{Tape : 2; Side : A; Approx. Time Counter : 18.9}

Closing by Sponsor:

SEN. BILL GLASER. I purposely left the title broad -- it doesn't narrow you down to certain sections of the code but narrows you down to certain concepts. Subcontracting in Montana is mostly a local small business operations; in fact, a lot of general contracting was that way also -- both had cash flow problems while they waited for their money. This bill talks about cash flow, fairness and the ability to hire an attorney to get their money. We want to ensure these people have an opportunity to succeed in their life's dream.

{Tape : 2; Side : A; Approx. Time Counter : 24.6}

MONTANA SENATE
1999 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL

DATE 2-18-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. DALE BERRY	X		
SEN. VICKI COCCHIARELLA	X		
SEN. BEA MC CARTHY	X		
SEN GLENN ROUSH	X		
SEN. FRED THOMAS	X		
SEN MIKE SPRAGUE, VICE CHAIRMAN	X		
SEN. JOHN HERTEL, CHAIRMAN	X		

SENATE BUSINESS & INDUST.
EXHIBIT NO. 7
DATE 2-18-99
BILL NO. SB 490

SENATE BILL 490
TESTIMONY OF TOM O'CONNELL
ADMINISTRATOR, A & E DIVISION

- My name is Tom O'Connell, Administrator of Architecture & Engineering Division
- Interested in SB 490 because my office is the contracting office for State agencies that construct buildings (University System, Corrections, DPHHS, Military Affairs, F W & P, etc.)
- While I am involved in State construction, I represent only a part of the construction encompassed in this bill. It includes cities, towns, counties, and school districts and I have nothing to do w/ their construction contracts.
- 17-8-242 currently requires all state agencies to pay for services and supplies within 30 days of receipt of a properly completed invoice. It also provides for interest to be paid if the payment is not timely. This does not apply to public sector overall – only to State agencies.
- Section 5 of this bill singles out construction contracts from 17-8-242 and requires these particular "services and supplies" be paid in half the time of all other State contracts.
- It would seem to make sense to include all public sector entities, such as cities, towns & school districts under the existing requirements in Title 17 rather than imposing an unattainable standard for construction payments.

- When a pay request is received under current statutes, our consultant (explain that most projects have private arch/engineers as required by law) reviews the request and then forwards it to my office for analysis. The payment is approved & then the state accounting division issues a check.

- Subcontractors are concerned about prompt payment. I reviewed payment for January and found the following:

    1) Average of 7 days for consultant to approve pay request (from date signed by contractor).

    2) Average of 14 days for A&E to process payments from the date received.

    3) That's 21 days and adding in mailing time to us from consultant and for mailing the check to the contractor, the average time to process a payment from contractor signing to having a check in his hands is 25-27 days.

    4) Current law allows 30 days from receipt of billing – we are providing prompt payment.

- A good barometer of service is contractor feedback – several years ago when we had 500± projects, we received calls from contractors concerned about payments and we monitored how many days it took us. We have had very few complaints in recent years.

- We have had complaints from subs that they have not been paid and have had the general contractor tell them that we have not paid them. We have been able to shown in most cases that the general had been paid by us.

- In conclusion, I oppose Section 5 of the bill because of the discrepancy with 17-8-242 and because it is an unrealistic standard. It reduces our ability to adequately administer contracts and our ultimate responsibility to the taxpayers of Montana.

- Thank you for your time – I will be available for questions.

DATE February 18, 1999

SENATE COMMITTEE ON Bus + Ind.

BILLS BEING HEARD TODAY: SB 446; SB 490, SB 452
SB 453, SB 470; SB 430

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Zach Pallister	443-0336	ASAM	SB490	X	
Kati Kintli	443-8345	Montana Tavern Assn	SB 452	X	
Tom O'Connell	444-3104	DLE Division	SB 490		X
Mike Foster	442-4162	MT Contractors' Assoc.	SB 490	X	
Gail Abercrombie	442-7582	MT Petroleum Assn	SB 430	X	
Dennis Iverson	442-1900	NECA	SB 490	X	
Dexter Busby	761-4100	Mont. Ref Co	SB 430	X	
Roy Brown	252-4411	Myself	SB 430	X	
L.V. Montalban	873-2848	MOBO INC	SB 430	X	
Elaine Mitchell	873-2672	Montana Coop	SB 430	X	
Dan Mitchell	873-2775	Comanche Dairy	SB 430	X	
Patrick M. Montalbo	873-2845	NMOCA	SB 430	X	
Gary Feland	434-5124	Tipling Energy	SB 430	X	
Josh Allen	443-7531	Cenex	SB 430	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 18, 1999

SENATE COMMITTEE ON Bus. & Ind.

BILLS BEING HEARD TODAY: SB 446, SB 490, SB 452, SB 453
SB 470, SB 430

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Kirk A. Astroth	388-1232	MT Children's Trust Fund	SB470	✓	
JIM WOLFE	442-4710	POLAR ELECTRIC	SB 490	✓	
Paul Cartwright	442-6528	self	SB 446	✓	
Cecilia Vaniman	994-5449	Montana State Univ	SB490		✓
JULIE IPPOLITO	443-0358	Restaurant Owner/self	SB446	✓	
TOM HEISLER	761 7009	MTA + CCTA	SB452 SB453 SB446	✓	
Ralph Ferraro	587-9355	MTA-GCLBA	SB 456 " 453 " 446	✓	
Mike Hope	585-7786	MTA - GCLBA	SB 456 435 446	✓	
Bob Fletcher	587-3605	GCTA - Bozeman	SB 456 453	✓	
JEROME ANDERSON	449-3118	SHELL OIL CO.	SB430	✓	
Carl Schwartz	457-1377	AS Am	SB490	✓	
Janet Cook	248-8543	a BC Electrician ASAM	SB490		
Bill Fenton	442-8330	NECA	SB490	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 19, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 482 SB 483 SB 484 SB 485, 2/15/1999; SB 501, 2/16/1999

Executive Action: SB 501; SB 482; SB 483 SB 484; SB 485; SB 452 SB 453; SB 446; SB 490 SB 406; SB 130; SB 132 SB 408; SB 360; SB 391

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 446

Motion: SEN. BERRY moved that SB 446 DO PASS.

Discussion: Motion: SEN. MCCARTHY moved that SB 446 BE AMENDED.

Discussion: Mr. Campbell explained the amendments **EXHIBIT(bus41a10)**. The amendments were from the Department. Mr. Staples was in agreement. One was to provide an immediate effective date and also an applicability date stating that this act is only going to apply to applications received after the effective date of this bill. Number two is inserting a subsection (c) that is mostly clarification about when quotas are filled, there would be one more license made available. This would be a one time deal. Number three concerns people who had put into the lottery system, had qualified, but did not receive a license. They would be given preference the next time. The last one states that interest would not accrue during the period when there is a protest on an application. **SEN. FRED THOMAS** asked about number three--what sort of a preference would be given? **SEN. MCCARTHY** said that last time the applications went into a pool and if the person was already in the pool, they would get preference first since they had already gone through the examinations, etc. **SEN. COCCHIARELLA** stated that in the lottery some, because of criteria, have preference over others who don't meet all the criteria. So it is not a preference concerning money, but just a list of criteria one meets. If you have a preference, you are higher up in the draw. This just gives those people who missed out last time the preference to be considered higher up in the draw.

Vote: Motion that SB 446 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. ROUSH moved that SB 446 DO PASS AS AMENDED. Motion carried unanimously. 7-0

{Tape : 1; Side : B; Approx. Time Counter : 19.7}

EXECUTIVE ACTION ON SB 490

Motion: SEN. THOMAS moved that SB 490 DO PASS.

Discussion: Motion: SEN. COCCHIARELLA moved that SB 490 BE AMENDED.

Discussion: Mr. Campbell said the amendments **EXHIBIT(bus41a11)** came from Carl Schweitzer who represents the subcontractors. All parties seemed to be in agreement. State agencies were already under statutory obligations of having to pay within 30 days and they pay a fine if they are late. Number one takes out state entities but leaves in local governments, school districts, etc. Number two changes the time for the pay from 15 days to 30 days so it is consistent with the state agencies. Number three, after the word owner (commercial and local government entities), it says "or a state agency" which means that when a contractor receives payment from the above entities they must within three days turn around and pay the subcontractor. Number four and five makes the 30 days from 15 and 33 days from 18.

SEN. HERTEL said that he had visited with some of the subcontractors and they were very happy with the bill. **SEN. THOMAS** asked if the state agencies were being taken out of the bill. **Mr. Campbell** said "no," they and others are included in the bill.

SENATORS BERRY AND SPRAGUE both had received statements from the contractors and subcontractors who were in favor of this bill with the amendments.

Vote: Motion that SB 490 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. COCCHIARELLA moved that SB 490 DO PASS AS AMENDED. Motion carried 6-1 with Senator Thomas voting no.

EXECUTIVE ACTION ON SB 408

Motion/Vote: SEN. SPRAGUE moved that SB 408 BE TABLED. Motion carried 6-1 with Senator Cocchiarella voting no.

{Tape : 1; Side : B; Approx. Time Counter : 27.7}

MONTANA SENATE
1999 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL

DATE 2-19-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. DALE BERRY	X		
SEN. VICKI COCCHIARELLA	X		
SEN. BEA MC CARTHY	X		
SEN GLENN ROUSH	X		
SEN. FRED THOMAS	X		
SEN MIKE SPRAGUE, VICE CHAIRMAN	X		
SEN. JOHN HERTEL, CHAIRMAN	X		

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 2-19-99
BILL NO. SB 490

Amendments to Senate Bill No. 490
1st Reading Copy

For the Business and Industry Committee

Prepared by Bartley Campbell
February 18, 1999

1. Page 2, line 14 through line 15.
Strike: "a" on line 14 through "system," on line 15

2. Page 3, line 12.
Strike: "15"
Insert: "30"

3. Page 3, line 14.
Following: "owner"
Insert: "or a state agency"

4. Page 3, line 24.
Strike: "15"
Insert: "30"

5. Page 3, line 30.
Strike: "18"
Insert: "33"

- END -

SB 484 SPONSOR: Mesaros, Ken SHORT TITLE: Submit mortgage lender per day examination fee to electors
REFERRED ON: 03/02/1999 HEARD ON: 03/18/1999
TABLED ON: 03/18/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 485 SPONSOR: Mesaros, Ken SHORT TITLE: Submit mortgage lender renewal fee to electors
REFERRED ON: 03/02/1999 HEARD ON: 03/18/1999
TABLED ON: 03/18/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 490 SPONSOR: Glaser, Bill SHORT TITLE: Require prompt payment for construction contractors and subcontractors
REFERRED ON: 03/02/1999 HEARD ON: 03/22/1999
EXECUTIVE ACTION: 03/25/1999 Bill Concurred as Amended -- VOTE: 17 - 1
FINAL DISPOSITION 04/27/1999 Chapter Number Assigned

SB 501 SPONSOR: Hertel, John SHORT TITLE: Regulate mausoleums and columbarium
REFERRED ON: 03/02/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/23/1999 Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION 04/10/1999 Chapter Number Assigned

SB 521 SPONSOR: Hargrove, Don SHORT TITLE: Allow sale of fireworks for millenium
REFERRED ON: 03/19/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/23/1999 Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION 04/10/1999 Chapter Number Assigned

SJ 15 SPONSOR: Thomas, Fred SHORT TITLE: Interim study on benifits paid to injured workers under Worker's Comp
BY REQUEST OF: (S) Labor And Employment Relations Standing Committee
REFERRED ON: 03/27/1999 HEARD ON: 03/29/1999
EXECUTIVE ACTION: 03/29/1999 Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION 04/13/1999 (S) Filed with Secretary of State

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 22, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Gay Ann Masolo (R)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 490, SB 13, SB 365, 3/3/1999
Executive Action: SB 13, SB 365, SB 126, SB 132, SB 331, SB 399,

HEARING ON SB 490

Opening Statement by Sponsor: Senator Glazer, SD 8, introduced SB 490.
{Tape : 2; Side : B; Approx. Time Counter : 86 - 145}

Proponents' Testimony: Zack Pallister, Sub Contractors of America.
{Tape : 2; Side : B; Approx. Time Counter : 145 - 164}

Jim Wolfe, Polar Electric.
{Tape : 2; Side : B; Approx. Time Counter : 164 - 169}

Carl Schweitzer, Montana Sub-Contractors Assn. EXHIBIT(6)
{Tape : 2; Side : B; Approx. Time Counter : 169 - 206}

Dennis Iverson, National Electrical Contractors
{Tape : 2; Side : B; Approx. Time Counter : 206 - 209}

Mike Foster, Montana Contractors Assn.
{Tape : 2; Side : B; Approx. Time Counter : 209 - 257}

Opponents' Testimony: None

Questions from Committee Members and Responses: Reps. Pavlovich, McKenney, Sliter, Brown, Bitney, Stovall, Ewer and Simon questions witnesses.
{Tape : 2; Side : B; Approx. Time Counter : 257 - 500}
{Tape : 3; Side : A; Approx. Time Counter : 0 - 131}

Closing by Sponsor: Senator Glazer closed SB 490.
{Tape : 3; Side : A; Approx. Time Counter : 131 - 148}

EXECUTIVE ACTION ON SB 126

Motion: **REP. KRENZLER** moved that **SB 126 BE CONCURRED IN.**
{Tape : 3; Side : A; Approx. Time Counter : 148 - 153}

Motion/Vote: **REP. LAWSON** moved that **SB 126 BE AMENDED. Motion carried 17-1 with Lawson voting no.**
{Tape : 3; Side : A; Approx. Time Counter : 153 - 160}

Motion/Vote: **REP. SLITER** moved that **SB 126 BE CONCURRED IN AS AMENDED. Motion carried 17-1 with Trexler voting no.**
{Tape : 3; Side : A; Approx. Time Counter : 160 - 178}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/22/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo			X
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss			
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

EXHIBIT 6
DATE 3/22/99
SB 490

Proposed Amendments to SB 490

1. Page 4, line 1, following "than"
   Strike: " 33 days"
   Insert: " 30 days plus 3 working days"

2. Page 5, line 5,
   Strike: "October 1, 1999"
   Insert: "July 1, 1999"

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 3-22-99

BILL NO. SB 490 SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	DENNIS IVERSON	HELENA	N.E.C.A
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 24, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 97, HB 184, SB 482, SB 271, SB 435, SB 446, SB 453, SB 490, HB 515, HB 516, SB 217, SB 319, HB 364, HB 670

Motion/Vote: REP. SLITER moved that SB 446 BE CONCURRED IN. Motion carried 13-5 with Ewer, Krenzler, Masolo, Simon, and Trexler voting no.
{Tape : 2; Side : B Approx. Time Counter : 221 - 467}

EXECUTIVE ACTION ON SB 453

Motion: REP. SIMON moved that SB 453 BE CONCURRED IN.

Motion/Vote: REP. SIMON moved that SB 453 BE AMENDED. Motion carried 15-3 with Matthews, Pavlovich, and Tuss voting no. EXHIBIT(6)
{Tape : 2; Side : B; Approx. Time Counter : 467 - 500}
{Tape : 3; Side : A; Approx. Time Counter : 0 - 19}

Motion/Vote: REP. LAWSON moved that SB 453 BE AMENDED. Motion carried unanimously. EXHIBIT(7)
{Tape : 3; Side : A; Approx. Time Counter : 19 - 36}

Motion/Vote: REP. SIMON moved that SB 453 BE CONCURRED IN AS AMENDED. Motion carried unanimously.
{Tape : 3; Side : A; Approx. Time Counter : 36 - 58}

EXECUTIVE ACTION ON SB 490

Motion: REP. KRENZLER moved that SB 490 BE CONCURRED IN.
Motion/Vote: REP. KRENZLER moved that SB 490 BE AMENDED. Motion carried unanimously.
{Tape : 3; Side : A; Approx. Time Counter : 74 - 100}

Motion/Vote: REP. KRENZLER moved that SB 490 BE CONCURRED IN AS AMENDED. Motion carried 17-1 with McKenney voting no.
{Tape : 3; Side : A; Approx. Time Counter : 100 - 174}

EXECUTIVE ACTION ON HB 515

Motion: REP. SLITER moved that HB 515 DO PASS.
{Tape : 3; Side : A; Approx. Time Counter : 174 - 180}

Motion/Vote: REP. SLITER moved that HB 515 BE AMENDED. Motion carried 12-6 with Ewer, Krenzler, Matthews, Pavlovich, Squires, and Tuss voting no. EXHIBIT(8)
{Tape : 3; Side : A; Approx. Time Counter : 180 - 184}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/24/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

HOUSE STANDING COMMITTEE REPORT

March 25, 1999

Mr. Speaker:

We, your committee on **Business and Labor** report that **Senate Bill 490** (third reading copy -- blue) **be concurred in as amended.**

Signed: *Representative Bruce Simon, Chair*

To be carried by Representative Bruce Simon

And, that such amendments read:

1. Page 4, line 1.
Strike: "33"
Insert: "30 days plus 3 working days"

2. Page 5, line 5.
Strike: "October 1, 1999"
Insert: "July 1, 1999"

- END -

Committee Vote:
Yes 17, No 1.

671334SC.ham

1999 Montana Legislature

About Bill -- Links

SENATE BILL NO. 490

INTRODUCED BY B. GLASER

AN ACT REQUIRING PROMPT PAYMENT FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS; PROVIDING FOR THE PAYMENT OF INTEREST FOR DELAYED PAYMENTS; ALLOWING COSTS AND ATTORNEY FEES IN CIVIL ACTIONS TO ENFORCE PAYMENT; ALLOWING OTHER REMEDIES; PROVIDING EXCEPTIONS; SUPERCEDING THE UNFUNDED MANDATE LAW; AMENDING SECTION 18-2-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Payment of contractors and subcontractors. Notwithstanding any other provision of this title, payment of a construction contractor or subcontractor, as those terms are defined in [section 3], for services performed by a construction contractor or subcontractor is governed by the provisions of [sections 3 through 9].

Section 2. Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, [section 1], 18-2-113, 18-2-114, and 18-2-122:

(1) "building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state money;

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of transportation;

(d) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);

(2) "building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed;

(c) leased or to be leased by a state agency;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in 17-5-401 and 17-5-801."

Section 3. Definitions. As used in [sections 3 through 9], unless the context requires otherwise, the following terms apply:

(1) "Construction contract" means a written agreement between an owner and a contractor for the contractor to construct or improve or to provide construction management for the construction or improvement of an improvement to real property.

(2) "Contractor" means a person who has signed a construction contract with an owner.

(3) "Government entity" means a city, town, county, consolidated municipal-county government, school district, or other special district.

(4) "Improve" means to build, alter, demolish, repair, construct, expand, cover, excavate, grade, fill, clear, plant, landscape, or furnish material or labor, or both for an improvement.

(5) "Improvement" means all or a part of a residential or commercial building, structure, area of real property, quantity of earth or fill material, tree or shrubbery, driveway, roadway, or parking area.

(6) "Owner" means a governmental entity or private entity that has a legal interest in the real property improved or to be improved by the performance of the construction contract.

(7) "Owner's representative" means an architect, engineer, or other person who represents the owner and is designated in the contract as the person representing the owner for the purposes of the administration or oversight of the performance of the construction contract.

(8) "Receipt" or "receive" means actual receipt.

(9) "Subcontract" means a contract between a contractor and a subcontractor or between a subcontractor and another subcontractor, the purpose of which is the performance of all or a part of the construction contract.

(10) "Subcontractor" means a person who has contracted with a contractor or another subcontractor for the purposes of performance of all or a part of a subcontract.

Section 4. Performance entitles contractor or subcontractor to payment. (1) Performance by a contractor of a construction contract in accordance with the provisions of the contract entitles a contractor to payment from the owner.

(2) Performance by a subcontractor of a subcontract entitles the subcontractor to payment from the contractor.

Section 5. Payment to contractor and subcontractor. (1) If a contractor performs a construction contract according to the terms of the contract and requests, either directly to the owner or to owner's representative, payment for performance of the contract, the owner shall pay the contractor, within 30 days after receipt by the owner or the owner's representative of the request for payment, for work performed or materials provided in accordance with the contract.

(2) Within 3 working days after a contractor receives a periodic or final payment from an owner or a state agency, the contractor shall pay the subcontractor, if any, the full amount due the subcontractor in accordance with the subcontract for work performed or materials provided in accordance with that subcontract.

(3) Within 3 working days after a subcontractor receives a periodic or final payment from a contractor, the subcontractor shall pay another subcontractor, if any, the full amount due the subcontractor under the subcontract for work performed or materials provided in accordance with that subcontract.

Section 6. Obligations upon delay of payment. (1) If a periodic or final payment that is required by a construction contract to be paid by an owner to a contractor is delayed by more than 30 days from the date the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor to subcontractors on a pro rata basis.

(2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor is delayed for more than 30 days plus 3 working days from the date the payment is required by the subcontract to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the subcontractor shall ensure that any interest accrued on the delayed payment is distributed by the subcontractor to other subcontractors, if any, on a pro rata basis.

(3) Interest is not required to be paid pursuant to this section unless the owner, contractor, or subcontractor, as appropriate, has been notified of the requirements of this section at the time the request for payment is made. Acceptance of progress payments or final payment releases any claim for interest

on the payment.

Section 7. Prevailing party entitled to costs and attorney fees. In a civil action on a contract to enforce an obligation imposed by [sections 3 through 9], the prevailing party is entitled to reasonable attorney fees and costs, both for trial and appeal. If the parties to a construction contract or subcontract use arbitration, the arbitrator may award fees and costs as the arbitrator may determine.

Section 8. Remedies not exclusive. The remedies provided by [sections 3 through 9] are not exclusive of any other remedy provided by law or contract.

Section 9. Exception for certain residential dwellings. The provisions of [sections 3 through 9] do not apply to improvements to real property intended for residential purposes that consist of four or fewer residential units.

Section 10. Unfunded mandate law superceded. The provisions of [this act] expressly supercede and modify the requirements of 1-2-112 through 1-2-116.

Section 11. Codification instructions. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 1, and the provisions of Title 7, chapter 1, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [section 1].

(3) [Sections 3 through 9] are intended to be codified as an integral part of Title 28, chapter 2, and the provisions of Title 28, chapter 2, apply to [sections 3 through 9].

Section 12. Applicability. [This act] applies to contracts agreed to on or after July 1, 1999.

- END -

Latest Version of SB 490 *(SB0490.ENR)*
Processed for the Web on April 14, 1999 (12:59PM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the status of the bill for the bill's primary sponsor.

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